

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-665

August 14, 2003

LAURIE DOWNS, ET AL vs. CENTRAL
MAINE POWER COMPANY
Request for Commission Investigation
Into the New Central Maine Power
Company Transmission Line Proposal
For Elliot, Kittery and York

ORDER APPROVING
STIPULATION

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

We approve a Stipulation resolving all issues raised in this 10-person complaint proceeding. The stipulating parties agree that Central Maine Power Company (CMP) needs to enhance the electrical system within the towns of York, Kittery, Eliot and Ogunquit. The parties also agree that CMP's preferred project and route, as modified by CMP in its rebuttal testimony, represent the most reasonable alternative available to CMP to meet the enhanced electrical needs. The preferred project includes constructing a new transmission line along the Maine Turnpike in parts of Kittery and York. The parties agree that the transmission line will cross the York River by means of underground cable and cable attached to the Turnpike bridge, and that CMP will bear the cost of this project, including the York River crossing, and that the projected costs should be included in CMP's transmission rates.

II. BACKGROUND

On October 31, 2002, the Commission received a complaint pursuant to 35-A M.R.S.A. § 1302 from Laurie A. Downs and nine other CMP customers and residents of the Town of York. The complainants asked the Commission to open an investigation of CMP's proposed new 69 kV transmission line to be built from the Bolt Hill substation in Eliot to the York Harbor substation in York. The complainants alleged that CMP had failed to respond to numerous inquiries about the new transmission line, including the need for the line, environmental, aesthetic, and safety concerns related to the line, and alternative routes for the line. The complainants asked for an investigation that would compel CMP to answer these questions and concerns, to produce objective data that demonstrate that the present electrical system is inadequate, and to consider alternatives that do not require construction of the new transmission line.

On October 25, 2002, the Public Advocate filed a Petition to Initiate Proceedings. In his Petition, the Public Advocate asked the Commission to initiate proceedings "to review, investigate and take appropriate action" with respect to CMP's plan to build the 69 kV transmission line described above. The investigation was warranted because, in

his view, the project had already generated public opposition, which might lead to additional costs that CMP should consider in comparing the project to other alternatives and CMP had not demonstrated that it considered conservation or distributed generation as an alternative to the new line.

On November 8, 2002, CMP filed its timely answer to the 10-person complaint and the Public Advocate's request. CMP urged the Commission to dismiss the complaint and to reject the Public Advocate's petition. CMP asserted that it had taken adequate steps to remove the cause of the 10-person complaint by explaining the need for the project at many local meetings and in writing to the Town of York Board of Selectmen and therefore, the investigation sought by the complainants was not warranted. For similar reasons, CMP asked the Commission to deny the Public Advocate's request.

On January 24, 2003, the Commission issued an Order Initiating Formal Investigation. The Commission found that a reasonable reading of the complaint amounts to a challenge that:

1. CMP has not adequately demonstrated that the electrical system within the Towns of York and Kittery will soon suffer from electrical distribution problems which will be solved by the proposed transmission upgrade;
2. Even if significant distribution problems exist or will soon exist, CMP has not demonstrated that the transmission project is the only or even best solution to the distribution problems; and
3. Even if a transmission upgrade is necessary, CMP has not demonstrated that either proposed route is safe or reliable or reasonably sized or located.

January 24 Order at 3. The Commission concluded that the nature of the complainants' allegations raised significant technical and perhaps policy issues, and that it could not conclude that the causes of the complaint had been removed until its technical staff had obtained and thoroughly reviewed the relevant information.

As the Public Advocate's petition essentially raised the same issues as the complaint, his request was also granted. The two investigations were consolidated for all purposes and all subsequent material was filed only in the 10-person complaint docket, Docket No. 2002-665.

The *January 24 Order* made the Office of the Public Advocate (OPA) and Laurie Downs, the lead petitioner, parties to the formal investigation. Petitions to intervene were granted on behalf of Kathleen and Richard Boston, Terry E. Lacasse, the Town of York and the York Conservation Commission (consolidated), the Town of Kittery, the Town of South Berwick and the Town of Eliot.

Through discovery responses and a technical conference, CMP stated that its preferred option, described as option 2, was to build a transmission line from Kittery to York, primarily along the Maine Turnpike, along Route 1 for a short distance (about ½ mile), along the Little River in an existing but unused right of way, ultimately terminating at an existing substation in York Harbor. The new line would convert the radial lines serving Ogunquit, York Beach and York Harbor into a transmission loop.

Two intervenors, the OPA and the Town of York, jointly hired consultants who were asked to file a report on the need for the proposed line and on alternative ways of meeting any need. The OPA-York consultants agreed that a need exists to address voltage and reliability problems in the southern York county area. The OPA-York consultants, however, recommended an alternative solution and route to CMP's preferred option. The consultants recommended an "option 3," which involves upgrading and adding a second line in CMP's existing corridors for Transmission Line 119 and Transmission Line 139. Line 119 is a 34.5 kV transmission line running from the Quaker Hill substation in North Berwick through South Berwick and Wells to the Ogunquit substation. Line 139, another 34.5kV transmission line, runs from the Ogunquit substation to a substation at York Beach on to a substation at York Harbor.

The Commission's Advisory Staff (Staff) also filed a report. The Staff found a need to improve the voltage support and reliability in the southern York county area. The Staff stated that replacing the current radial system that now serves the area with a looped system would be beneficial in terms of the reliability of service, and was appropriate given the magnitude of the load, the population density and geographical character of the area, local T&D system maintenance requirements and the potential loss of load from a single contingency outage. The Staff concluded that the Maine Turnpike route (Option 2) appeared to be a reasonable option. The Staff also concluded that Option 3 might be a reasonable alternative, especially if the Maine Turnpike corridor could not be used.

Laurie Downs also submitted a report. She concluded that her review of CMP's data responses and answers at technical conferences indicated that Option 3 could be a better solution to York's electrical needs, at the same, or less, cost than Option 2, and impose fewer environmental and aesthetic costs than Option 2.

On May 7, 2003, the Commission held a public witness hearing in York. More than 200 persons attended and more than 25 testified. The vast majority of persons who stated a preference preferred the Option 3 route. One person objected to that route. Many voiced concerns about Option 2, including the desire to avoid the protected area around the York River west of the Turnpike, the proximity of the Little River corridor to residential areas and an elementary school, and noise and other aesthetic concerns raised by the line along the Turnpike and the Turnpike Spur Road.

Because of the Intervenor Reports and the public testimony favoring Option 3, the Commission decided to send notice of this complaint proceeding to the towns

through which the Option 3 route would pass (besides York, Wells, North Berwick, Berwick and Ogunquit) and invite those towns to intervene and participate in this case. On June 25, 2003, the Town of Ogunquit petitioned to intervene. The Examiner granted Ogunquit's petition on July 3, 2003.

On June 23, 2003, CMP filed rebuttal testimony and a response to the Staff, OPA-York and Downs' reports. In the testimony and report, CMP further analyzed Option 3, and further refined Option 2 by taking into account the public comments and concerns and making changes to mitigate these concerns. The "further refined" Option 2 was called "CMP's Preferred Option."

CMP estimated the cost of its Preferred Option to be \$12.7 million. It estimated the cost of the OPA's preferred option to be \$15.7 million. However, CMP asserted that the OPA's version of Option 3 was inferior in terms of reliability. To obtain similar reliability for Option 3, CMP stated that a significant rebuild of the Quaker Hill substation would be necessary, raising the cost of Option 3 to about \$22.5 million.

On July 17, 2003, the Commission held a technical conference on CMP's rebuttal filing, followed by a settlement conference. At the settlement conference, the parties and the Commission Staff worked out the principles around which a settlement could be structured. Two weeks later, CMP filed a Stipulation, which was signed by CMP, the Public Advocate, Laurie Downs, the Town of York, the Town of Kittery, the Town of Eliot, Kathleen and Richard Boston and Tracey Lacasse. The Towns of South Berwick and Ogunquit did not sign the Stipulation but do not oppose it.

III. DESCRIPTION OF STIPULATION

In the Stipulation, the parties agree that the electrical system within the towns of York, Kittery, Eliot and Ogunquit needs to be enhanced to ensure adequate transmission capacity and reliability, and that the CMP's Preferred Option is the best project to meet the system's electrical needs.¹ The parties also agree that the Preferred Option route is safe, reliable, reasonably sized and properly located.

The parties agree that the transmission line will cross the York River as described in Attachment 1, by means of a combination of underground cable and bridge attachments, and that the river crossing costs, as well as CMP's other costs, shall be included in CMP's transmission rates. CMP agrees that it will design and engineer the York Spur Road portion of the project in such a way as to accommodate a possible future request by the Town of York that CMP place the Spur Road cable underground at the Town's expense. CMP also agrees that, in designing the transmission line along the Route 1 corridor in York, it "will consider and, where practicable, will implement

¹ Attachment 1 to the Stipulation contains a detailed description of the Preferred Option route and electrical configuration.

measures to minimize significant adverse abutter, environmental and community impacts that might otherwise occur.”

The parties also agree to cooperate and support, when possible, CMP’s efforts to obtain the necessary local, state and federal permits needed to build the project, as well as the necessary property rights of property owners, particularly the Maine Turnpike Authority and the Maine Department of Transportation. If CMP does not receive all necessary local permits by November 21, 2003, it has the right to request the Commission to rescind the Order Approving Stipulation.

IV. DECISION

As we have stated on numerous occasions, to approve a Stipulation the Commission must find that:

1. the parties joining the Stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
2. the process that led to the Stipulation was fair to all parties; and
3. the stipulated result is reasonable and not contrary to legislative mandate.

See Central Maine Power Company, Proposed Increase in Rates, Docket No. 92-345(II), Detailed Opinion and Subsidiary Findings (Me. P.U.C. Jan. 10, 1995), and *Maine Public Service Company, Proposed Increase in Rates (Rate Design)*, Docket No. 95-052, Order (Me. P.U.C. June 26, 1996).

We have also recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. *See Northern Utilities, Inc., Proposed Environmental Response Cost Recovery*, Docket No. 96-678, Order Approving Stipulation (Me. P.U.C. April 28, 1997). We find that the Stipulation in this case meets all of the above criteria.

In this transmission-siting type proceeding, the utility planning to build the line, the public agency charged with representing ratepayers, all three towns where most construction will occur, as well as a few individual landowners and local residents join the Stipulation. A broad spectrum of intervenors has actively participated in the proceeding, and all who have actively participated join the Stipulation. No party opposes the Stipulation. The first criterion is satisfied as we can be confident that there is no appearance or reality of disenfranchisement.

We also conclude that the process that led to the Stipulation was fair to all parties. Indeed, the settlement process was initiated at a publicly-announced settlement conference that was conducted by our Staff in our hearing room, with virtually all parties in attendance.

Finally, we conclude that the Stipulation is reasonable and consistent with the public interest. Based upon the record before us,² including our Staff's analysis of the evidence, we accept the stipulating parties' recommendation that CMP's Preferred Alternative is the best project to meet the electrical system needs of southern York County. We also agree with their finding that the proposed route is safe, reliable, reasonably sized and properly located. Our Advisory Staff found Option 2 to be a reasonable solution to the electrical needs of the area. The cost of Option 2 was estimated at between \$10.7 million and \$11.7 million, less than all the Option 3 route variations, estimated at between \$12 million and \$14 million. Moreover, based upon CMP's rebuttal and answers at the last technical conference, to put Option 3 on a comparable electrical basis, the cost of Option 3 increases to more than \$20 million.

Option 2 was modified to become the so-called CMP's Preferred Option in order to accommodate local concerns. CMP committed to crossing the York River in a way to avoid areas zoned by the Town of York as Resource Protection, and to accommodate the Town's desire that the line be "virtually invisible" in the immediate vicinity of the York River. CMP avoided using the Little River corridor to again avoid a Resource protection zone and to locate the line away from residential areas. These modifications to Option 2, made to mitigate local concerns as voiced by intervenors and persons at various public meetings, including our own public witness hearing, seem reasonable and do not reduce the electrical capacity and reliability benefits of Option 2, and do not adversely affect the safety of the transmission system.

The modifications do add about \$1 million to the cost estimate of Option 2, essentially attributable to the inclusion by CMP of the cost for the underground/bridge attachment York River crossing. The stipulating parties agree that CMP will pay for the additional costs of the river crossing, and that transmission ratepayers will ultimately bear the cost.

The issue of whether a locality or utility ratepayers should pay the increased system costs imposed for essentially aesthetic reasons is not an easy one. In the circumstances of the case, we are persuaded by the stipulating parties that it is reasonable and in the public interest for ratepayers to bear the increased costs of the "virtually invisible" river crossing. The aesthetics here involve the first few miles of the Maine Turnpike. It is reasonable to conclude that the State as a whole, which receives considerable benefits from tourism, will have a legitimate concern about the scenery visible at the beginning of the Turnpike.³ Indeed, the OPA, the public agency charged

² The stipulation provides that, for purposes of consideration of the Stipulation, the record consists of all written testimony, responses to data requests, and transcripts of hearings and technical conferences.

³ By contrast, the Stipulation provides that if the cable on the York Spur Road is placed underground at the request of the Town of York, the Town will pay the costs. In this instance, the aesthetic effect is less likely to be of concern to the State as a whole.

with representing ratepayer interests, agrees that it is reasonable for ratepayers to pay for the increased river crossing costs in this instance.

We also conclude that the Stipulation is not contrary to legislative mandate. Generally, Title 35-A leaves questions concerning safety, reliability and cost allocation to the sound discretion of the Commission. The only statute that might be pertinent by analogy is 35-A M.R.S.A. § 2312. Section 2312 authorizes governing body of a municipality to require a utility to locate its facilities underground, for those facilities that are along a state highway or state aid highway in a designated historic district. However, the cost of relocation or placement is imposed on the municipality, unless the utility “has specifically agreed in writing to bear a portion of the cost.” 35-A M.R.S.A. § 2312(1)

One might reasonably assert that the Town of York and its residents are requiring the river crossing facilities to be located underground in this case. While Section 2312 does not apply, we conclude that even if it did, the statute would not mandate that the Town pay for the underground costs. Section 2312 permits the utility to agree to bear the costs. As explained above, that decision is reasonable in this case. Accordingly, the stipulated result is not contrary to any explicit, implied or even analogous mandate.

In closing, we make one observation and impose a condition on CMP. The stipulating parties agreed that CMP should recover all costs associated with the project in its transmission rates. We interpret that provision to mean all prudent costs incurred by CMP shall be recovered in rates. Our approval of the Stipulation confirms that CMP’s choice of the “Preferred Option” is prudent. A review of the actual costs incurred, and of CMP’s decisions after this Order, is left to future proceedings if any prove necessary.

We agree that it is reasonable for CMP to agree to consider and, where practicable, “implement measures to minimize significant adverse abutter, environmental and community impacts that might otherwise occur.” We wish to emphasize, however, that the term “practicable” should include a consideration of the costs of the mitigation. So that the Commission can be informed if costs do increase significantly and can decide if further investigation is warranted, CMP is directed to notify the Commission if the costs increase by more than 15% of the estimate in CMP’s rebuttal filing (approximately \$12.7 million).⁴

Accordingly, we

ORDER

⁴ This threshold is for notification purposes only. It has no relevance to any future prudence issues.

That the Stipulation dated July 30, 2003 and submitted to the Commission on August 1, 2003 is approved. The Stipulation is attached to this Order and incorporated by reference.

Dated at Augusta, Maine, this 14th day of August, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus